Evans. Proposal to amend Ohio constitution.

TENTH ANNUAL MEETING,

OHIO STATE BOARD OF COMMERCE

COLUMBUS, JANUARY 7 and 8, 1904.

A Proposal to Amend the State Constitution on the Subject of the Adoption of Constitutional Amendments.

BY

NELSON W. EVANS,
Of the Portsmouth, Ohio, Bar.

PUBLISHED BY THE
OHIO STATE BOARD OF COMMERCE,
COLUMBUS,
1904.

CONTENTS.

A PROPOSAL TO AMEND THE STATE CONSTITUTION ON THE SUBJECT OF THE ADOPTION OF CONSTITUTIONAL AMENDMENTS.

BY NELSON W. EVANS, OF THE PORTSMOUTH, OHIO, BAR.

Revolutions are said never to go backward. That would be well for humanity, if strictly true. The Longworth act of the last Legislature was a measure of progress. It was a revolution which went forward. It has given us three constitutional amendments, two of which, the Governor's veto and the Single Liability of Stockholders, were much desired. The first cured a defect in the Constitution of 1802, repeated in that of 1851, growing out of a quarrel with the Territorial Governor, Gen. Arthur St. Clair, the effects of which continued for one hundred years.

The unwarranted prejudice against corporations held by the Constitutional Convention of 1851, gave us the curse of double liability imposed by that body, to discourage the formation of corporations. This curse was removed at the November election, 1903.

The Longworth law ought to be amended so that when the State conventions of either party fail to act on a proposed Constitutional amendment, the county conventions of that party may approve or disapprove of any such amendments.

The Constitution of Ohio expresses a number of principles which are repudiated by the present generation. We ought to employ the freest, easiest and most economical way to be rid of these, so that the organic law of the State shall, at all times, express the sentiments of the people now taking part in the government. To obtain the full fruits of the Longworth law, we should amend the Constitution so that we can easily and cheaply change the organic law.

I have prepared a proposed substitute for Article XVI, of the present Constitution. That article, composed of three sections, covers the whole subject of Amendments to the Constitution.

AN EXPLANATION OF THE PROPOSED AMENDMENT OF ARTICLE XVI.

The proposed amendment makes only two changes in the original Article XVI, composed of three Sections, as adopted in 1851.

The first is the change of time in advertising or giving notice of the amendments. In the amendment it is three months, instead of six months, as in the present Article XVI.

The second change is that instead of requiring a majority of all the votes cast at an election to adopt an amendment, an amendment is adopted by a majority of those who vote on the proposition.

In examining these propositions, we will examine first the time of notice which ought to be given, and second, the number of votes to require adoption.

THE TIME OF NOTICE.

The notice required is purely arbitrary and whether any notice ought to be given at all, or what it should be, rests entirely with the body which makes the Constitution. It is recognized as a doctrine of statecraft that notice of a change in the organic law should be given to the body of electors whose votes must effect the change, so that they may consider the propositions and pass upon them intelligently, but as to length and character of notice there is no principle of political government except that the makers of each body of organic law shall determine this question.

In Ohio, in making the Constitution of 1851, it was determined that the time of notice should be six months, in at least one newspaper in each county in the State.

I am unable, with the short notice for the preparation of this paper, to state why the period was fixed at six months, unless it was done to favor the newspaper fraternity.

By reason of the Statutes requiring legal notices to appear in newspapers of opposite politics, this class of notices is uniformly inserted in two newspapers in each county, and hence instead of appearing in 88 newspapers in the State, they appear in at least 176 newspapers.

The cost of advertising five Constitutional Amendments in 1903 was $70,455.56.

These amendments were published in:

88 Republican papers;

87 Democratic papers;

42 German papers, making a total of 217, each of which received $324.68. A tender was made to the Cincinnati Enquirer for the publication of these amendments as a Democratic paper. The tender was refused on the ground that their space was more valuable than the compensation offered. This is the only paper that refused the advertisement. The rate paid was 60 per cent. of the rate for legal notices.

In looking at the proposition to amend, there are two points to be considered; first, what are the reasons for the continuance of the present length and character of the notice, and second, what reasons are there for the proposed change?

REASONS FOR SHORTENING THE TIME OF NOTICE.

For the continuance of the present length of notice, we see no reasons. The reasons which caused the adoption of the six-month clause in 1851 are only a matter of historical curiosity at this time, and have no present application. At that time there were practically no railroads in the State, daily newspapers were few and of a limited circulation. Mails were carried on horseback and in stages and it was thought twenty-six insertions of a notice of this kind were none too many to enable the people to duly consider a proposition to change the organic law.

Now with several daily newspapers in almost every county, with weeklies and semi-weeklies in each county

devoted to general news, and with the other numerous newspapers devoted to the interest of special classes, which discuss every question under the sun, it does not take the people six months to understand any subject. It would be well to consider the views of other States on the subject of notice of amendments to the organic law.

LENGTH OF TIME REQUIRED BY OTHER STATES.

Only three States of the forty-five require six months' notice of a constitutional amendment. These are Ohio, Arkansas and Tennessee. The last two named are not regarded in Ohio as models of progress. In Tennessee, the six months' notice was adopted in the Constitution of 1844 and was retained in the Constitution of 1870. The Constitution of Arkansas of 1836 and of 1864 required notice for three times in twelve months, in all the newspapers in the State. That of 1868 made the publication three months. The Constitution of 1874 required six months' publication.

No State other than the three above named advertise constitutional amendments in newspapers over three months. Alabama, Colorado, Delaware, Florida, Mississippi, Iowa, Illinois, Kansas, Kentucky, Louisiana, Maryland, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, Virginia, West Virginia, Wisconsin, Washington and Wyoming, twenty-four States, advertise constitutional amendments for three months; Missouri, Oregon and Texas, three States, advertise amendments

four weeks. In Connecticut and Minnesota amendments are published with the annual laws.

In Georgia, two months' publication of notice is required. In Indiana, no notice is required. Idaho requires six weeks' notice. Utah requires two months' notice.

In Maine, Michigan, New Hampshire, Rhode Island, South Carolina and Vermont the usual notice of elections is required prior to voting on constitutional amendments. In Massachusetts, North Carolina and California, the notice is such as may be ordered by law, in case of each submission.

Thus it will be seen that the time and manner of notice is purely arbitrary, but in selecting the period of three months we are following a precedent set by twenty-four States, and acting in the interest of economy in reducing the cost one-half.

THE VOTE WHICH SHOULD ADOPT A CONSTITUTIONAL AMENDMENT.

The accepted rule in the United States is that the majority shall determine all measures and govern, but the question narrows itself to this: Shall that majority be of the total vote at the election, or of those voting on the proposition?

VOTE REQUIRED TO ADOPT CONSTITUTIONAL AMENDMENTS IN OTHER STATES.

Only two States in the Union require a vote greater than a majority of those voting at a particular election to adopt a constitutional amendment. These are New

Hampshire, which requires two-thirds, and Rhode Island, which requires three-fifths.

Those States which require a majority of all votes cast at the particular election are eighteen in number: Alabama, Arkansas, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Maine, Minnesota, New York, North Carolina, Oregon, Ohio, Tennessee, Texas, Virginia and Wyoming.

Those requiring a majority of those voting on the proposition are: California, Colorado, Florida, Kansas, Kentucky, Louisiana, Maryland, Missouri, Mississippi, Montana, Nebraska, New Jersey, North Carolina, Pennsylvania, South Carolina, South Dakota, Utah, Nevada, West Virginia, Washington and Wisconsin, twenty-one. The modern tendency is to require only a majority of those voting on the proposition. Of Constitutions recently made only Georgia and Idaho retain the majority of all votes cast for adoption.

ONLY VOTES CAST SHOULD BE COUNTED.

It is contrary to all true principles of government that the vote of an elector should be counted and returned other than as cast. The idea of an election implies that the elector can vote either way on a proposition or a candidate, or not at all. The elector's vote is intended to express his sentiments. Those sentiments on a candidate, or a proposition, may be either for or against, or indifferent. If the elector desires by his vote to express his indifference to a proposition, or to a want of judgment either way, he should be per-

mitted to do so, but in Ohio, in case of an election on a constitutional amendment, the law takes hold of his vote of indifference and records it "no." There is no system of morals, philosophy or of political economy which can approve such a course on the part of the State.

If the elector wishes to assume the position of indifference, he should be permitted to do so.

The Constitution makers, no doubt, believe their work to be perfect. They had confidence in it and wished it to remain as long as possible, as a monument to their confidence in themselves, and hence provided that the indifferent vote should count "no."

By parity of reasoning, it can be shown that an indifferent vote should be counted affirmative, just as logically as negative. If it is to be counted either way than cast, it should be counted affirmative when a majority of those voting on the proposition is affirmative.

EACH LIVING GENERATION SHOULD RULE ITSELF.

The State of Ohio has been ruled by the majority of the members of the Constitutional Convention of 1851 ever since September 2nd, 1851. All of them are now deceased, but they rule us dead as well as living. Some modern thinkers are of the opinion that each living generation should rule itself. The counting of the indifferent vote against a constitutional amendment has secured the work of the Constitution makers against a change.

Prior to 1903, out of seventeen attempts to amend the Constitution, but three have been successful. Those

three were successful because both of the two great parties wanted the amendments and co-operated in the use of a paster ballot, the way for which was prepared in the Joint Resolution submitting these amendments to the people.

In 1883 a Joint Resolution Proposing an Amendment to Article Four of the Constitution—Judiciary—was submitted to the people, in which the *Form of Ballot* prescribed was as follows:

"And Be It Further Resolved, That at said election, the voters desiring to vote in favor of said amendment, shall have placed upon their ballots the words, "Judicial Constitutional Amendment—Yes;" and the voters who do not favor the adoption of said amendment, may place on their ballots the words, "Judicial Constitutional Amendment—No." (Ohio Laws 80, 1883, page 382.)

In 1885 a Joint Resolution proposing amendments to the Constitution: Article II, Section 2, Biennial Election of Members of the General Assembly; Article III, Section 1, relating to the Executive Department of the State; Article X, Section 2, Election of County Officers, Term Three Years; was submitted to the people, in which the *Form of Ballot* prescribed was as follows:

As such election, the voters in favor of the adoption of the amendment to Section 2 of Article II, shall have placed upon their ballots the words, "Amendment to Section 2 of Article II of the Constitution—Yes;" and those who do not favor the adoption of such amendment, shall have placed upon their ballots the

words, "Amendment to Section 2 of Article II of the Constitution—No." Those who favor the adoption of the amendment to Section 1 of Article III of the Constitution, shall have placed upon their ballots the words, "Amendment to Section 1 of Article III of the Constitution—YES;" and those who do not favor the adoption of such amendment, shall have placed upon their ballots the words, "Amendment to Section 1 of Article III of the Constitution—No." Those who favor the adoption of the amendment to Section 2 of Article X of the Constitution, shall have placed upon their ballots the words, "Amendment to Section 2 of Article X of the Constitution—YES;" and those who do not favor the adoption of such amendment, shall have placed upon their ballots the words, "Amendment to Section 2 of Article X of the Constitution—No." (Laws of Ohio, 82, 1885, page 447.)

In 1885 another Joint Resolution amending Section 4, Article X, of the Constitution, relative to the election of township officers, was submitted to the people, in which the *Form of Ballot* prescribed was as follows:

The electors desiring, at said election, to vote in favor of the foregoing amendment, shall have written on their ballots the words, "Constitutional Amendment, Township Officers—YES;" and those who do not favor the adoption of said amendment shall have written or printed on their ballots the words, "Constitutional Amendment, Township Officers—No." (Laws of Ohio, 82, 1885, page 449.)

The Australian ballot was not in use in these years. It will be observed that the wording of these Joint

Resolutions, prescribing the form of ballot to be used in voting on these amendments, was well calculated to make it permissible to use "pasters" or "stickers" as they were called, on the regular party ballot. As both parties connived in the plan, Constitutional Amendment-stickers were used on regular party tickets at these elections, and by this means only did it become possible to secure the adoption of Constitutional Amendments. This action was the predecessor of the Longworth Law.

The enactment of the Longworth act is a new departure and revolution. Under its provisions, the dominant political party in the State can once in two years amend the Constitution. That law is an excellent one, but to give it greater scope Article XVI should be amended as indicated.

PREJUDICES OF THE CONSTITUTION MAKERS OF 1851.

The Constitution makers of 1851 were full of prejudices, which have since passed away. They were prejudiced against the veto power and refused it. Through the Longworth law we now have it. They were prejudiced against the appointing power and made too many elective officers and for too short terms. They gave us the *ad valorem* tax system, a blight on the State, and four attempts to amend the Constitution to be rid of it, have been unavailing. They were prejudiced against banks and all kinds of corporations and gave us the double liability feature of which we are only now relieved. They forbade the State to contract any debt for public improvements, a provision which

has destroyed our canals and prevented us having one or more ship canals between Lake Erie and the Ohio river. The Constitution sought to require all banking laws to be submitted to the people, but the Supreme Court nullified this provision by construction.

Public sentiment on these subjects has entirely changed and the Constitution should change with it. The plan of adopting amendments by a majority of those voting on them is in harmony with the principle of the majority ruling, and should be adopted. The present plan is an obstacle in the way of progress and deprives the present living people of Ohio from ruling themselves according to their own ideas, and in that way deprives them in certain directions of liberty, from the acquisition of property, and from the pursuit of happiness.

And for that reason the constitutional rule requiring a majority of all the votes cast at an election to adopt an amendment should be changed.

COLUMBUS, OHIO:
SPAHR & GLENN, PRINTERS.
1904.